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MAYOR
NORTH CANTON, OHIO

North Canton City Hall, 145 North Main Street, North Canton, Ohio 44720
330/499-3986

January 17, 2003

TO: Chuck Osborne
Council at Large

RE: Arrowhead Country Club
Park & Institutional District

I am in receipt of your letter of January 16, 2003. I assume your question is whether or not the property could be developed for single family residential under present Park & Institutional (P&I) zoning.

Also enclosed please find an undated letter of a citizen, Victor L. Berardi, raising some of the issues that would have to be dealt with in development at Arrowhead Country Club as a single family development.

Under Permitted Buildings or Uses in the Park & Institutional district is:

"7. Single family dwelling R-50 and R-70 and accessory buildings or use."

It is interesting to note that uses 1 through 5 of the permitted uses in a Park & Institutional district are in the plural and use 6, 7, and 8 are in the singular.

The purpose clause for Park & Institutional district provides as follows:

"1. Purpose

This district is established to provide for parks, public buildings, other similar institutional uses."

Thus there appears to be an inconsistency between the purpose clause and the permitted uses in the institutional district if one were to take the position that the development of a single family development in the Park & Institutional district were

permitted. It is quite possible that the reference at Use number 7 is to one single family dwelling. This is reinforced by the plural versus singular which I have earlier referred to in this opinion.

I have reviewed the Ohio Rulings on statutory construction where there is a piece of legislation susceptible of two constructions. It provides as follows:

If the words and language of a statute are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. A statute susceptible of either of two opposing interpretations must be read in the manner which effectuates, rather than frustrates, the major purpose of the legislative draftsman.

In the Park & Institutional district provisions of the zoning ordinance, at paragraph 5, there is site plan approval in which there are only three items that need to be submitted to the Planning Commission and at subparagraph (b) of that provision there are only three criteria to the Planning Commission for reviewing the site plan.

Compare this with the substantial regulations set forth at Section II, Chapter B, Residential District of the zoning ordinance and it becomes even more suspect that the drafters of the Park & Institutional district, by including single family dwelling in the Park & Institutional district ever intended the development of a residential allotment in a Park & Institutional district.

Based on this significant ambiguity in the legislation, this office could not recommend that the Planning Commission and City Offices permit the development of the Arrowhead Country Club as a residential allotment without the filing of either a declaratory judgment action by the City or in the alternative litigation by a proposed developer to determine the meaning of the Park & Institutional district in the North Canton Ordinance.

Very truly yours,



Roy H. Batista
Director of Law

RHB/mlb
c: Council
Assistant Director of Law
Mayor, D/Administration
City Engineer, Supt., Permits & Insp.